

Union Calendar No. 357

110TH CONGRESS
2D SESSION

H. R. 3965

[Report No. 110-579]

To extend the Mark-to-Market program of the Department of Housing and Urban Development, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 25, 2007

Ms. WATERS (for herself, Mr. FRANK of Massachusetts, and Ms. PRYCE of Ohio) introduced the following bill; which was referred to the Committee on Financial Services

APRIL 10, 2008

Additional sponsors: Mr. BACA and Ms. CLARKE

APRIL 10, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of the introduced bill, see copy of bill as introduced on October 25, 2007]

A BILL

To extend the Mark-to-Market program of the Department of Housing and Urban Development, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) *SHORT TITLE.*—*This Act may be cited as the*
 3 *“Mark-to-Market Extension and Enhancement Act of*
 4 *2007”.*

5 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 6 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

Sec. 3. Definitions.

Sec. 4. Extension of Mark-to-Market program.

Sec. 5. Funding for tenant and other participation and capacity building.

Sec. 6. Exception rents.

Sec. 7. Otherwise eligible projects.

Sec. 8. Disaster-damaged eligible projects.

Sec. 9. Period of eligibility for nonprofit debt relief.

Sec. 10. Acquisition of restructured projects by nonprofit organizations.

Sec. 11. Mark-to-market for moderate rehabilitation projects.

Sec. 12. Enhanced voucher assistance upon contract termination.

Sec. 13. Correcting harm caused by late subsidy payments.

Sec. 14. Effective date.

7 **SEC. 2. PURPOSES.**

8 *The purpose of this Act is to—*

9 (1) *continue the progress of the Multifamily As-*
 10 *sisted Housing Reform and Affordability Act of 1997,*
 11 *as amended by the Mark-To-Market Extension Act of*
 12 *2001;*

13 (2) *expand eligibility for Mark-to-Market re-*
 14 *structuring so as to further the preservation of afford-*
 15 *able housing in a cost-effective manner; and*

16 (3) *provide for the preservation and rehabilita-*
 17 *tion of projects damaged by Hurricanes Katrina,*
 18 *Rita, and Wilma, or by other natural disasters.*

1 **SEC. 3. DEFINITIONS.**

2 *Section 512 of the Multifamily Assisted Housing Re-*
 3 *form and Affordability Act of 1997 (42 U.S.C. 1437f note)*
 4 *is amended by adding at the end the following:*

5 “(20) *DISASTER-DAMAGED ELIGIBLE PROJECT.*—

6 “(A) *IN GENERAL.*—*The term ‘disaster-*
 7 *damaged eligible project’ means an otherwise eli-*
 8 *gible multifamily housing project—*

9 “(i) *that is located in a county that*
 10 *was designated a major disaster area on or*
 11 *after January 1, 2005, by the President*
 12 *pursuant to title IV of the Robert T. Staf-*
 13 *ford Disaster Relief and Emergency Assist-*
 14 *ance Act (42 U.S.C. 5121 et seq.);*

15 “(ii) *whose owner carried casualty and*
 16 *liability insurance covering such project in*
 17 *an amount required by the Secretary;*

18 “(iii) *that suffered damages not cov-*
 19 *ered by such insurance that the Secretary*
 20 *determines is likely to exceed \$5,000 per*
 21 *unit in connection with the natural disaster*
 22 *that was the subject of the designation de-*
 23 *scribed in subparagraph (A); and*

24 “(iv) *whose owner requests restruc-*
 25 *turing of the project not later than 2 years*
 26 *after the date that such damage occurred.*

1 “(B) *RULE OF CONSTRUCTION.*—A disaster-
 2 *damaged eligible project shall be eligible for*
 3 *amounts under this Act without regard to the re-*
 4 *lationship between rent levels for the assisted*
 5 *units in such project and comparable rents for*
 6 *the relevant market area.”.*

7 **SEC. 4. EXTENSION OF MARK-TO-MARKET PROGRAM.**

8 *Section 579 of the Multifamily Assisted Housing Re-*
 9 *form and Affordability Act of 1997 (42 U.S.C. 1437f note)*
 10 *is amended by striking “October 1, 2011” each place such*
 11 *term appears and inserting “October 1, 2012”.*

12 **SEC. 5. FUNDING FOR TENANT AND OTHER PARTICIPATION**
 13 **AND CAPACITY BUILDING.**

14 *Paragraph (3) of section 514(f) of the Multifamily As-*
 15 *sisted Housing Reform and Affordability Act of 1997 (42*
 16 *U.S.C. 1437f note) is amended—*

17 *(1) in subparagraph (A)—*

18 *(A) in the first sentence—*

19 *(i) by striking “not more than” and*
 20 *inserting “not less than”;*

21 *(ii) by striking “of low-income housing*
 22 *for which project-based rental assistance is*
 23 *provided at below market rent levels and*
 24 *may not be renewed” and inserting the fol-*
 25 *lowing: “and improvement of low-income*

1 housing for which project-based rental as-
2 sistance, subsidized loans, or enhanced
3 vouchers under section 8(t) are provided”;
4 and

5 (iii) in the second parenthetical clause,
6 by inserting before the closing parenthesis
7 the following: “, and predevelopment assist-
8 ance to enable such transfers”; and

9 (B) by inserting after the period at the end
10 the following: “For outreach and training of ten-
11 ants and technical assistance, the Secretary shall
12 implement a grant program utilizing perform-
13 ance-based outcome measures for eligible costs in-
14 curred. Recipients providing capacity building
15 or technical assistance services to tenant groups
16 shall be qualified nonprofit Statewide, county-
17 wide, areawide or citywide organizations with
18 demonstrated experience including at least a
19 two-year recent track record of organizing and
20 providing assistance to tenants, and independ-
21 ence from the owner, a prospective purchaser, or
22 their managing agents. The Secretary may pro-
23 vide assistance and training to grantees in ad-
24 ministrative and fiscal management to ensure
25 compliance with applicable Federal require-

1 *ments. The Secretary shall expedite the provision*
2 *of funding for fiscal year 2008 by entering into*
3 *new multi-year contracts with any prior grantee*
4 *without adverse audit findings or whose adverse*
5 *audit findings have been cleared, and by enter-*
6 *ing into an interagency agreement for not less*
7 *than \$1,000,000 with the Corporation for Na-*
8 *tional and Community Service or any other*
9 *agency of the Federal Government, that is se-*
10 *lected by the Secretary and the Secretary deter-*
11 *mines is qualified to conduct such program, to*
12 *conduct a tenant outreach and training program*
13 *under the same or similar terms and conditions*
14 *as was most recently conducted by the Corpora-*
15 *tion. The Secretary shall also make available*
16 *flexible grants to qualified nonprofit organiza-*
17 *tions that do not own eligible multifamily prop-*
18 *erties, for tenant outreach in underserved areas,*
19 *and to experienced national or regional non-*
20 *profit organizations to provide specialized train-*
21 *ing or support to grantees assisted under this*
22 *section. Notwithstanding any other provision of*
23 *law, funds authorized under this section for any*
24 *fiscal year shall be available for obligation in*
25 *subsequent fiscal years. The Secretary shall re-*

1 *quire each recipient of amounts made available*
2 *pursuant to this subparagraph to submit to the*
3 *Secretary reports, on a quarterly basis, detailing*
4 *the use of such funds and including such infor-*
5 *mation as the Secretary shall require.”; and*

6 *(2) by adding at the end the following new sub-*
7 *paragraphs:*

8 *“(D) PROHIBITIONS.—None of the funds*
9 *made available under subparagraph (A) may be*
10 *used for any political activities, political advo-*
11 *cacy, or lobbying (as such terms are defined by*
12 *Circular A–122 of the Office of Management and*
13 *Budget, entitled ‘Cost Principles for Non-Profit*
14 *Organizations’), or for expenses for travel to en-*
15 *gage in political activities or preparation of or*
16 *provision of advice on tax returns.*

17 *“(E) PROGRAM COMPLIANCE SYSTEMS.—*
18 *Each recipient of amounts made available under*
19 *subparagraph (A) shall develop systems to ensure*
20 *compliance with the program and the require-*
21 *ments of this paragraph.*

22 *“(F) PENALTIES.—The Secretary may im-*
23 *pose penalties on any recipient of amounts made*
24 *available under subparagraph (A) that fails to*
25 *comply with any requirement under this para-*

1 *graph or of the program established pursuant to*
 2 *this paragraph, which penalties may include—*

3 “(i) *ineligibility for further assistance*
 4 *from amounts made available under sub-*
 5 *paragraph (A); and*

6 “(ii) *requiring the recipient to reim-*
 7 *burse the Secretary for any amounts that*
 8 *were so misused.”.*

9 **SEC. 6. EXCEPTION RENTS.**

10 *In the matter preceding clause (i) of section*
 11 *514(g)(2)(A) of the Multifamily Assisted Housing Reform*
 12 *and Affordability Act of 1997 (42 U.S.C. 1437f note) is*
 13 *amended—*

14 (1) *by inserting “disaster-damaged eligible*
 15 *projects and” after “waive this limit for”; and*

16 (2) *by striking “five percent” and inserting “9*
 17 *percent”.*

18 **SEC. 7. OTHERWISE ELIGIBLE PROJECTS.**

19 *Section 514 of the Multifamily Assisted Housing Re-*
 20 *form and Affordability Act of 1997 (42 U.S.C. 1437f note)*
 21 *is amended by adding at the end the following:*

22 “(i) *OTHER ELIGIBLE PROJECTS.—*

23 “(1) *IN GENERAL.—Notwithstanding any other*
 24 *provision of this subtitle, a project that meets the re-*
 25 *quirements of subparagraphs (B) and (C) of section*

1 512(2) but does not meet the requirements of subpara-
 2 graph (A) of section 512(2), may be treated as an eli-
 3 gible multifamily housing project on an exception
 4 basis if the Secretary determines, subject to para-
 5 graph (2), that such treatment is necessary to pre-
 6 serve the project in the most cost-effective manner in
 7 relation to other alternative preservation options.

8 “(2) OWNER REQUEST.—

9 “(A) REQUEST REQUIRED.—The Secretary
 10 shall not treat an otherwise eligible project de-
 11 scribed under paragraph (1) as an eligible mul-
 12 tifamily housing project unless the owner of the
 13 project requests such treatment.

14 “(B) NO ADVERSE TREATMENT IF NO RE-
 15 QUEST MADE.—If the owner of a project does not
 16 make a request under subparagraph (A), the Sec-
 17 retary shall not withhold from such project any
 18 other available preservation option.

19 “(3) CANCELLATION.—

20 “(A) TIMING.—At any time prior to the
 21 completion of a mortgage restructuring under
 22 this subtitle, the owner of a project may—

23 “(i) withdraw any request made under
 24 paragraph (2)(A); and

1 “(ii) pursue any other option with re-
 2 spect to the renewal of such owner’s section
 3 8 contract pursuant to any applicable stat-
 4 ute or regulation.

5 “(B) DOCUMENTATION.—If an owner of a
 6 project withdraws such owner’s request and pur-
 7 sues other renewal options under this paragraph,
 8 such owner shall be entitled to submit docu-
 9 mentation or other information to replace the
 10 documentation or other information used during
 11 processing for mortgage restructuring under this
 12 subtitle.

13 “(4) LIMITATION.—The Secretary may exercise
 14 the authority to treat projects as eligible multifamily
 15 housing projects pursuant to this subsection only to
 16 the extent that the number of units in such projects
 17 do not exceed 10 percent of all units for which mort-
 18 gage restructuring pursuant to section 517 is com-
 19 pleted.”.

20 **SEC. 8. DISASTER-DAMAGED ELIGIBLE PROJECTS.**

21 (a) MARKET RENT DETERMINATIONS.—Section
 22 514(g)(1)(B) of the Multifamily Assisted Housing Reform
 23 and Affordability Act of 1997 (42 U.S.C. 1437f note) is
 24 amended by striking “determined, are equal” and inserting
 25 the following: “determined—

1 “(i) with respect to a disaster-damaged
 2 eligible property, are equal to 100 percent of
 3 the fair market rents for the relevant market
 4 area (as such rents were in effect at the
 5 time of such disaster); and

6 “(ii) with respect to other eligible mul-
 7 tifamily housing projects, are equal”.

8 (b) OWNER INVESTMENT.—Section 517(c) of the Multi-
 9 family Assisted Housing Reform and Affordability Act of
 10 1997 (42 U.S.C. 1437f note) is amended by adding at the
 11 end the following:

12 “(3) PROPERTIES DAMAGED BY NATURAL DISAS-
 13 TERS.—With respect to a disaster-damaged eligible
 14 property, the owner contribution toward rehabilita-
 15 tion needs shall be determined in accordance with
 16 paragraph (2)(C).”.

17 **SEC. 9. PERIOD OF ELIGIBILITY FOR NONPROFIT DEBT RE-**
 18 **LIEF.**

19 Section 517(a)(5) of the Multifamily Assisted Housing
 20 Reform and Affordability Act of 1997 (42 U.S.C. 1437f
 21 note) is amended by adding at the end the following: “If
 22 such purchaser acquires such project subsequent to the date
 23 of recordation of the affordability agreement described in
 24 section 514(e)(6)—

“(A) such purchaser shall acquire such project on or before the later of—

“(i) 5 years after the date of recordation of the affordability agreement; or

“(ii) 2 years after the date of enactment of the Mark-to-Market Extension and Enhancement Act of 2007; and

“(B) the Secretary shall have received, and determined acceptable, such purchaser’s application for modification, assignment, or forgiveness prior to the acquisition of the project by such purchaser.”.

**SEC. 10. ACQUISITION OF RESTRUCTURED PROJECTS BY
NONPROFIT ORGANIZATIONS.**

Paragraph (5) of section 517(a) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437 note) is amended by inserting “, or the sole general partner of the limited partnership owning the project,” after “if the project”.

SEC. 11. MARK-TO-MARKET FOR MODERATE REHABILITATION PROJECTS.

(a) RENEWAL OF EXPIRING PROJECT-BASED SECTION 8 MODERATE REHABILITATION CONTRACTS.—Section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended—

1 (1) *in subsection (a)(4)(A)(iv)—*

2 (A) *in subclause (I), by inserting “or” after*
 3 *the semicolon;*

4 (B) *by striking subclause (II); and*

5 (C) *by redesignating subclause (III) as sub-*
 6 *clause (II); and*

7 (2) *in subsection (b), by striking paragraph (3).*

8 (b) *RENT ADJUSTMENTS FOR COVERED PROJECTS.—*

9 (1) *RENT DETERMINATION AT INITIAL RENEWAL*
 10 *AFTER ENACTMENT.—Upon the first request by an*
 11 *owner of a covered housing project for renewal of*
 12 *project-based assistance pursuant to section 524 of the*
 13 *Multifamily Assisted Housing Reform and Afford-*
 14 *ability Act of 1997 made after the date of the enact-*
 15 *ment of this Act—*

16 (A) *the rent levels at which assistance will*
 17 *be provided pursuant to such renewal shall be*
 18 *determined as if such renewal were the initial re-*
 19 *newal of a contract for assistance under section*
 20 *524, as amended by subsection (a) of this section;*
 21 *and*

22 (B) *solely for purposes of determining the*
 23 *rent levels at which assistance will be provided*
 24 *pursuant to such first renewal after the date of*
 25 *the enactment of this Act, in the case of a project*

1 *for which contract rents were reduced upon a*
 2 *prior renewal of an expiring contract pursuant*
 3 *to subsection (b)(3) of section 524, as in effect on*
 4 *the day before the date of the enactment of this*
 5 *Act, the contract rent levels in effect immediately*
 6 *prior to such first renewal after the date of the*
 7 *enactment of this Act shall be the considered to*
 8 *be the deemed rent levels described in paragraph*
 9 *(3)(C).*

10 (2) *RENT ADJUSTMENTS AFTER INITIAL RE-*
 11 *NEWAL AFTER ENACTMENT.*—*After the first renewal of*
 12 *a contract for assistance of a covered housing project*
 13 *after the date of the enactment of this Act in accord-*
 14 *ance with paragraph (1) of this subsection, the Sec-*
 15 *retary of Housing and Urban Development shall ad-*
 16 *just rents in accordance with subsection (c) of section*
 17 *524.*

18 (3) *DEFINITIONS.*—*For purposes of this sub-*
 19 *section, the following definitions shall apply:*

20 (A) *The term “section 524” means section*
 21 *524 of the Multifamily Assisted Housing Reform*
 22 *and Affordability Act of 1997 (42 U.S.C. 1437f*
 23 *note).*

24 (B) *The term “covered housing project”*
 25 *means a project that receives project-based assist-*

1 *ance under section 8 of the United States Hous-*
2 *ing Act of 1937 (42 U.S.C. 1437f) which was re-*
3 *newed prior to the date of the enactment of this*
4 *Act pursuant to subsection (b)(3) of section 524,*
5 *as in effect on the day before the date of the en-*
6 *actment of this Act.*

7 (C) *The term “deemed rent levels” means*
8 *the contract rent levels in effect immediately*
9 *prior to the first renewal of assistance pursuant*
10 *to subsection (b)(3) of section 524, as in effect on*
11 *the day before the date of the enactment of this*
12 *Act, upon which contract rent levels were re-*
13 *duced, as adjusted by the applicable operating*
14 *cost adjustment factor established by the Sec-*
15 *retary at the date of such renewal and at the*
16 *date of any subsequent renewal pursuant to such*
17 *subsection (b)(3).*

18 (D) *The term “Secretary” means the Sec-*
19 *retary of Housing and Urban Development or*
20 *any public housing agency approved by the Sec-*
21 *retary to serve as the contracting party in lieu*
22 *of the Secretary.*

1 **SEC. 12. ENHANCED VOUCHER ASSISTANCE UPON CON-**
 2 **TRACT TERMINATION.**

3 *Subsection (d) of section 524 of the Multifamily As-*
 4 *sisted Housing Reform and Affordability Act of 1997 (42*
 5 *U.S.C. 1437 note) is amended—*

6 *(1) in the subsection heading, by inserting “OR*
 7 *TERMINATION” after “CONTRACT EXPIRATION”; and*

8 *(2) in paragraph (1)—*

9 *(A) by inserting “or termination” after “the*
 10 *date of the expiration”;*

11 *(B) by striking “shall make” and inserting*
 12 *“shall provide”;*

13 *(C) by striking “available on behalf of” and*
 14 *inserting “for”; and*

15 *(D) by inserting “or termination” after*
 16 *“the date of such expiration”.*

17 **SEC. 13. CORRECTING HARM CAUSED BY LATE SUBSIDY**
 18 **PAYMENTS.**

19 *Section 8 of the United States Housing Act of 1937*
 20 *(42 U.S.C. 1437f) is amended by adding at the end the fol-*
 21 *lowing new subsection:*

22 *“(ff) LATE PAYMENTS.—*

23 *“(1) GENERAL.—The Secretary shall make pay-*
 24 *ments of project-based rental assistance provided*
 25 *under this section for each month on or before the due*
 26 *date under paragraph (2) for the payment.*

1 “(2) *DUE DATE.*—*The due date under this para-*
2 *graph for a monthly payment is the first business day*
3 *of the month.*

4 “(3) *NOTIFICATION OF LATE PAYMENT.*—*The*
5 *Secretary shall notify a project owner at least 10*
6 *days before the due date for a housing assistance pay-*
7 *ment if such payment will be late and shall inform*
8 *the project owner of the approximate date the pay-*
9 *ment will be made.*

10 “(4) *USE OF RESERVES.*—*If a housing assistance*
11 *payment for a project has not been received before the*
12 *expiration of the 10-day period beginning upon the*
13 *due date for such payment, the project owner shall,*
14 *after the expiration of such period, be entitled to ob-*
15 *tain funds from a project replacement reserve, resid-*
16 *ual receipts reserve, or other project reserve in order*
17 *to pay operating and debt service costs for the project.*
18 *Upon receipt of the monthly housing assistance pay-*
19 *ment from the Secretary, the project owner shall*
20 *promptly replace or replenish any such funds ad-*
21 *vanced pursuant to the preceding sentence.*

22 “(5) *INTEREST PAYMENT.*—*If a monthly housing*
23 *assistance payment is not made before the expiration*
24 *of the 30-day period beginning upon the due date for*
25 *such payment, the Secretary shall pay to the owner*

1 *simple interest on the amount of such monthly pay-*
2 *ment, from the due date until the date of payment,*
3 *at a rate determined by the Secretary of Treasury in*
4 *accordance with section 12 of the Contract Disputes*
5 *Act of 1978 (41 U.S.C. 611). Interest payments under*
6 *this paragraph shall be made from amounts made*
7 *available for management and administration of the*
8 *Department of Housing and Urban Development.”.*

9 **SEC. 14. EFFECTIVE DATE.**

10 *This Act, and the amendments made by this Act, shall*
11 *take effect on the earlier of—*

12 *(1) the date of enactment of this Act; or*

13 *(2) September 30, 2008.*

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A BILL

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